

Senate Bill No. 774

CHAPTER 659

An act to amend Sections 25214.15 and 25214.16 of the Health and Safety Code, relating to hazardous packaging.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 774, Ridley-Thomas. Hazardous packaging.

(1) Existing law, the Toxics in Packaging Prevention Act, prohibits a manufacturer, importer, agent, or supplier, as defined, from offering for sale or for promotional purposes in this state a package or packaging component that includes specified regulated metals and prohibits a person from offering for sale or for promotional purposes in the state a product in a package that includes those intentionally introduced regulated metals. A violation of the hazardous waste control laws, including the act, is a crime.

The act exempts from its requirements a package or a packaging component that meets any of specified conditions. One of these conditions, until January 1, 2010, is met when the package or a packaging component that has a vitrified label, when tested in accordance with a prescribed test, does not exceed 5.0 ppm for lead.

This bill would prohibit a glass bottle package with paint or applied ceramic decoration from qualifying for an exemption under that act if the paint or decoration contains lead or lead compounds in excess of 0.06% by weight. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law also requires each manufacturer or supplier, as defined, to furnish a certification of compliance to the purchaser, as defined, stating that the package or packaging component is in compliance with the act or the package is exempt, as specified.

This bill would also provide that a purchaser includes a supplier for purposes of the above-described certification of compliance requirement.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The problem of lead contamination on various brands of soda bottles manufactured outside of the state represents a health risk to California consumers. In addition, there is a huge “grey market” industry in California.

(b) These imported soda products have become increasingly popular in the United States because of their distinctive taste, and because they are sold in distinctive “returnable” glass bottles.

(c) Some glass bottles manufactured outside this country and sold in this state are decorated with paint containing high levels of lead.

(d) Consumers, including children and pregnant women, are exposed to this lead through hand-to-mouth contact when they touch the bottles, or when they eat hand-held food, like sandwiches and chips, after touching the bottles.

(e) In addition, lead can occasionally find its way from the painted label into the soda itself.

(f) Lead poisoning is a very serious problem for children six years of age or younger because lead is a neurotoxin and causes irreversible neurological damage. There is no safe level of lead in the blood. By the time a child has five micrograms of lead per deciliter of blood, he or she has already lost seven IQ points.

(g) Children with lead poisoning not only lose IQ points but also suffer life-long behavior and learning problems.

(h) Lead is a listed carcinogen and a known reproductive toxin that can cause birth defects, serious developmental disorders in infants and children, and harm to the male and female reproductive systems.

(i) Lead is so toxic that even minuscule amounts can be hazardous to human health.

(j) Studies by the United States Health and Human Services Agency and the Agency for Toxic Substance and Disease Registry report that lead can be transferred to the growing fetus, and high levels of lead exposure may cause increased risk of spontaneous abortions, miscarriages, and stillbirths.

(k) Studies also show that even low levels of lead exposure can adversely affect a pregnancy, causing premature birth, shortened gestation, decreased fetal growth and retarded fetal mental development.

(l) Newborns can be exposed to lead through the mother’s milk.

(m) Young children are more susceptible to the harmful effects of lead than adults because their brains, nervous systems, and other organs are still developing.

(n) High levels of lead exposure in young children’s blood may lead to progressive loss of memory and cognitive ability, personality changes, inability to concentrate, lethargy, muscle weakness and atrophy, tremors, involuntary muscular twitching, rapid and involuntary eye movement, dementia, seizures, loss of ability to swallow or speak, and progressive loss of consciousness. In severe cases, retardation, experiencing recurrent convulsions and a higher risk of death may occur.

(o) Recent studies have shown that even low levels of childhood lead exposure can cause or contribute to anemia, slowed growth, impaired speech and hearing, learning disabilities, decreased intelligence, diminishment of

balance, visual skills, fine motor skills, verbal skills, attention and concentration, and impulse control, early signs of attention deficit hyperactivity disorder or “ADHD” and increased criminal behavior.

(p) In 1991, the Childhood Lead Poisoning Act was enacted, which expressed that childhood lead exposure represents the most significant childhood environmental health problem in the state today.

(q) Lead exposure in adults affects principally the brain and central nervous system, but can also adversely impact the body’s production of blood, impair the functioning of the kidneys, contribute to high blood pressure and harm both male and female reproductive organs.

SEC. 2. Section 25214.15 of the Health and Safety Code is amended to read:

25214.15. (a) A package or packaging component qualifies for an exemption pursuant to Section 25214.14 only if the manufacturer or supplier prepares, retains and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section 25214.13.

(2) The name, position, and contact information for the person who is the manufacturer’s or supplier’s contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section 25214.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) If an exemption is being claimed under subdivision (a) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section 25214.13.

(c) If an exemption is being claimed under subdivision (b) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) If an exemption is being claimed under subdivision (c) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) If an exemption is being claimed under subdivision (d) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) If an exemption is being claimed under subdivision (e) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or safety law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) If an exemption is being claimed under subdivision (f) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) If an exemption is being claimed under subdivision (g) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update the following documentation for the package or packaging component to which the exemption applies:

(1) Applicable test data.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:

(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(A) Submit the required documentation to the department.

(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section 25214.13, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

(k) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to Section 25214.14, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

SEC. 3. Section 25214.16 of the Health and Safety Code is amended to read:

25214.16. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component, even when the purchaser is also a supplier, stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(c) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section 25214.14 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(d) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.